

## **REMARKS**

The enclosed is responsive to the Examiner's Office Action mailed on January 21, 2005. At the time the Examiner mailed the Office Action, claims 1-20 were pending. By way of the present response the Applicant has: amended claims 1, 9-10, 14 and 17; added claim 21; and canceled claim 7. As such, claims 1-6 and 8-21 are now pending. The Applicants respectfully request reconsideration of the present application and allowance of all claims now presented.

The amendments to the claims are made only to place the claims in what Applicant considers to be better form and not in response to the rejections. Applicant does not believe any amendment is needed to comply with any requirement of patentability.

### **35 U.S.C. 102(e) Rejections**

The Examiner rejected claims 1-5, 7-12 and 14-20 under 35 U.S.C. 102(e) as being anticipated by Khotimsky, et al., U.S. Patent 6,788,686 (hereinafter "*Khotimsky*").

Independent claims 1, 9, 14 and 17 each include at least one limitation not disclosed nor suggested in *Khotimsky*. Therefore, independent claims 1, 9, 14 and 17 are not anticipated and are patentable over *Khotimsky*.

In particular, independent claim 1 includes the limitation of "assigning a plurality of consecutive data frames to different data packets, wherein each data packet is to include data frames" (emphasis added).

Examiner suggests that Figure 4 in *Khotimsky* discloses this limitation. Specifically, Examiner suggests that Figure 4 shows frames 0-7 assigned to 3 different

paths and that each path includes frames. (Office Action, p. 2, Jan. 21, 2005). In other words, Examiner equates the items numbered 0-7 in Figure 4 of *Khotimsky* with data frames of claim 1 and the paths shown in Figure 4 of *Khotimsky* with data packets of claim 1. Applicant respectfully disagrees.

*Khotimsky* is directed towards “maintaining packet order,” not distributing data frames among data packets, and therefore discloses a method to restore the original order of the packets in an end-to-end data flow. (See *Khotimsky*, Title and col. 2, lines 30-31). Accordingly, Figure 4 shows a multipath packet transmission scenario. (*Khotimsky*, col. 3, line 7).

The items numbered 0-7 shown in Figure 4 of *Khotimsky* are not equivalent to the data frames of claim 1. Rather, the items numbered 0-7 are each packets. As *Khotimsky* states in describing Figure 4, “a frame size of eight is used in assigning sequence numbers to the packets.” (Col. 6, lines 34-35). *Khotimsky* further states, “packet one in the second frame is dispatched on switching path P0.” (*Khotimsky*, col. 6, lines 39-40). Therefore, the items numbered 0-7 are packets rather than data frames of claim 1.

Additionally, not only are the items numbered 0-7 not equivalent to the data frames of claim 1, but a “frame” of *Khotimsky* is not equivalent to a data frame of claim 1. *Khotimsky* defines a frame as “a set of consecutive enumerated items exhausting the entire range of the sequence numbers.” (*Khotimsky*, col. 4, lines 39-41). Therefore, each “frame” of *Khotimsky* includes multiple packets. In contrast, claim 1 requires that “each data packet is to include data frames.”

Furthermore, the “paths” shown Figure 4 in *Khotimsky* are not equivalent to the data packets of claim 1. In *Khotimsky*, “each individual path, which is a concatenation of a number of communication links and switching devices, preserves the order of the transmitted packets.” (*Khotimsky*, col. 1, lines 36-36). Specifically, in describing Figure 4, *Khotimsky* states, “consider the packet sequencing scenario depicted in FIG. 4 in which eleven packets...are demultiplexed across four switching paths identified as P0, P1, P2, and P3.” (*Khotimsky*, col. 6, lines 27-29). Therefore, the paths of *Khotimsky* are links and devices across which data packets travel. The paths of *Khotimsky* are not the data packets of claim 1.

Therefore, the items numbered 0-7 shown in Figure 4 of *Khotimsky* are not equivalent to data frames of claim 1, and the paths shown in Figure 4 of *Khotimsky* are not equivalent to data packets of claim 1. Accordingly, Applicant submits that *Khotimsky* does not disclose the limitation of claim 1 of “assigning a plurality of consecutive data frames to different data packets, wherein each data packet is to include data frames” (emphasis added).

Applicant further submits that, beyond Figure 4, *Khotimsky* does not elsewhere teach, suggest or disclose the limitation of “assigning a plurality of consecutive data frames to different data packets, wherein each data packet is to include data frames.”

Independent claims 9, 14 and 17 each include similar limitations. Specifically, independent claim 9 includes the limitation “distributing the data frames among a plurality of data packets, wherein each data packet is to include the data frames” (emphasis added). Independent claim 14 includes the limitation “a processor configured to assign a plurality of consecutive data frames to different data packets,

wherein each data packet is to include data frames" (emphasis added). Independent claim 17 includes the limitation "a frame assigning element arranged to assign a current data frame in said sequence of data frames to a data packet, where the data packet is to include the current data frame and not to include a previous data frame" (emphasis added). Therefore, *Khotimsky* also does not anticipate independent claims 9, 14 and 17.

Claims 2-5, 8, 10-12, 15-16 and 18-20 depend, directly or indirectly, from one of the foregoing independent claims. Therefore, *Khotimsky* fails to anticipate claims 2-5, 8, 10-12, 15-16 and 18-20 for at least the reasons discussed above with respect to claims 1, 9, 14 and 17. Withdrawal of the rejection is respectfully requested.

### **35 U.S.C. 103(a) Rejections**

The Examiner rejected claims 6 and 13 under 35 U.S.C. 103(a) as being unpatentable over *Khotimsky*. Examiner asserts that the additional limitations of claims 6 and 13 would have been obvious to one having skill in the art at the time the invention was made.

Claims 6 and 13 depend from one of the foregoing independent claims. In view of the above remarks, a specific discussion of these dependent claims is considered to be unnecessary. Therefore, Applicant's silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim. If the Examiner believes that the limitations discussed above would have been obvious to one having ordinary skill in the art at the

time the invention was made, Applicants respectfully request a reference to specifically address Examiner's concerns.

Accordingly, Applicants respectfully request withdrawal of the rejection of dependent claims under 35 U.S.C. 103(a) and respectfully submit that the dependent claims are also in condition for allowance.

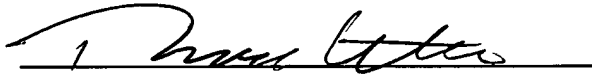
## **CONCLUSION**

Applicant respectfully submits that all rejections have been overcome and respectfully requests the allowance of all pending claims.

If there are any additional charges, please charge them to our Deposit Account Number 02-2666. If a telephone conference would facilitate the prosecution of this application, the Examiner is invited to contact Thomas C. Webster at (408) 720-8300.

Respectfully Submitted,  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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Thomas C. Webster  
Reg. No.: 46,154

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, CA 90025-1026  
(408) 720-8300